

REMARKS

This responds to the Office Action mailed on February 4, 2009.

Claims 1 and 8 are amended; claims 15-19 are hereby canceled, without prejudice to the Applicant; claims 20-25 were previously cancelled, without prejudice to the Applicant; as a result, claims 1-14 are now pending in this application.

Example support may be found throughout the original filed Application. By way of example only, the learned Examiner is directed to the original filed specification page 8 lines 6-14 and page 10 lines 24-26.

§ 101 Rejection of the Claims

Claims 15-19 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. There rejections are now moot in view of the fact that the Applicant has cancelled these claims without prejudice to or disclaimer by the Applicant. Moreover, the cancellation of these claims is not to be viewed as any admission on the part of the Applicant that the Applicant agrees with this rejection.

§ 103 Rejection of the Claims

Claims 1-9 and 11-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cain (U.S. 6,857,026) and Ash et al. (U.S. 6,590,867) and further in view of Narvaez-Guarnieri et al. (U.S. 6,347,078). It is of course fundamental that in order to sustain an obviousness rejection that each and every element in the rejected claims must be taught or suggested in the proposed combination of references.

Initially, the Applicant would like to bring to the learned Examiner's attention that the Ash reference is directed to Voice over Internet Protocol (VoIP) network processing. In this reference, Ash determines the path of a call before the call is processed by the routers. That is, the intermediate nodes do not change the path of the VoIP processing. This makes sense in a VoIP scenario because one wants to assure that the voice communication is not interrupted by path switching processes during a call. The learned Examiner's attention is directed to column 5 lines 14-23 and 41-45, and other locations throughout the Ash reference where it makes clear that intermediate nodes do not alter the path of VoIP processing; rather, before a path is initially

selected one or many available paths are selected based on evaluated criteria (mostly if not all associated with bandwidth considerations).

With respect to the Cain reference, the path and an alternative path to route for failover communication is predetermined and communicated to the nodes. That is, in Cain the alternative path is not independently determined via any intermediate node. *See Cain column 4 lines 30-41, etc.* In fact, Cain explicitly does this because it believes that this saves on processing time at the intermediate nodes. *See Cain column 3 lines 7-9 and lines 23-36.*

With respect to the newly added reference of Narvaez-Guarnieri, a data structure is updated and maintained by each node for purposes of routing. This data structure keeps information for each node in the network. *See Narvaez-Guarnieri column 2 lines 14-17; FIG. 1, etc.* Additionally, within Narvaez-Guarnieri any alleged policy (comparison and/or SPT operations as asserted by the learned Examiner) evaluations are pre-configured within each of the nodes. That is, each node is preconfigured to perform certain Narvaez-Guarnieri evaluations. *See Narvaez-Guarnieri column 4 lines 56-62.* There is no ability in Narvaez-Guarnieri to acquire policy evaluations in a dynamic fashion; the alleged policy evaluations are preconfigured in each of the network nodes. It is just the data that the preconfigured evaluations use that exist in the evolving data structure.

Conversely, with Applicant's invention each policy is acquired and evaluated by each of the intermediate nodes in a dynamic fashion that is not preconfigured and hard coded in the intermediate nodes as pre-installed software algorithms that are static in nature albeit using dynamic information. That is, in Narvaez-Guarnieri the software or the executed comparisons or algorithms are static even if they use dynamic data acquired from the Narvaez-Guarnieri data structure. So, if the algorithms need to change then each of the intermediate nodes have to be updated or upgraded.

Applicant has amended the independent claims to now make these distinctions more clear and asserts that the proposed combination of references do not teach these newly added elements. As such, the rejections of record should be withdrawn. Applicant respectfully requests from the learned Examiner that the rejections be withdrawn and the claims allowed.

Specifically, there are two distinct elements to the Narvaez-Guarnieri teachings, the data structure and the evaluations of bandwidth algorithms. The data structure supplies data that fees

the operation of the algorithms as correctly noted by the learned Examiner. However, in Narvaez-Guarnieri neither the data structure nor the routing table include the bandwidth evaluation algorithms; those are pre-installed and statically configured on each of the nodes. Applicant has previously amended the claims to show that the policies are themselves executable statements so that the policies of the claims cannot be viewed as mere data or metrics; rather they are algorithms or executable statements. Now Applicant has amended the claims such that the policies are acquired from the routing table. This is not taught, suggested, or even possible with the Narvaez-Guarnieri reference. So, the rejections of record should be withdrawn and Applicant respectfully requests the same from the learned Examiner.

In addition, Applicant notes that a VoIP network would not be very efficient and would not be functional if it continually permitted intermediate nodes to reroute calls to different paths. So, Applicant believes that the Cain reference loses its teachings and defeats its very purpose if used in combination with Narvaez-Guarnieri. Additionally, the Ash reference asserts that for processing efficiency it is not desirable to have intermediate nodes change paths and that it is more desirable to predetermine paths before intermediate nodes process packet routing; so, Ash advises against the approach taken by Applicant and that which was taken by Narvaez-Guarnieri. Therefore, the Narvaez-Guarnieri teaches away from the Cain and Ash references and cannot be used in combination with those references to render Applicant's invention obvious. So, Applicant respectfully requests that the learned Examiner re-evaluate the propriety of using Narvaez-Guarnieri in the proposed combination and Applicant respectfully asserts that the combination is improper.

Claims 10 and 19 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over Cain, Ash et al. and Narvaez-Guarnieri et al. and further in view of Yoshihara et al. (U.S. 2002/0040396). Claim 10 is dependent from amended independent claim 8; as such Applicant asserts that claim 10 is now in condition for allowance in view of the amendments and remarks presented above with respect to independent claim 8. Applicant respectfully requests an indication of the same from the learned Examiner.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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By /  /

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